

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2065 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHIPATSINH R ZALA

Versus

KULDIP SHARMA

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Appearance:

MR YS MANKAD for Petitioner

MR S.P.Dave, A.G.P. for Respondents

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 23/04/96

ORAL JUDGEMENT

By this petition, petitioner has prayed for a mandamus or any other appropriate writ against the respondents to immediately return the suit - pan stall belonging to the petitioner and restore its possession to him and fix it to its original place and pay compensation for wrongful removal and breakage, etc.

The premises on which the petition has been filed

was that the petitioner was granted permission to park handcart on a monthly rent of Rs.20/- in the area of 5' x 3', near Jubilee ground and accordingly permission is granted to the petitioner to park the handcart. Thereafter, the petitioner has applied for obtaining necessary light connection in his cabin and he has deposited a sum of Rs.100/- for the electric connection. Thereafter it is alleged that the Circle Police Inspector has forcibly removed the cabin besides the octroi naka, near Jubilee ground. As the same is removed illegally and without following any procedure of law, he sent telegram not to remove the same. As no heed was paid to the same, the present petition is filed.

This court has initially issued notice on 19.4.94 returnable on 30-4-84. Thereafter, on 4.5.83, rule is issued and made the same returnable on 18.6.84. Despite the service of the rule, no affidavit-in-reply is filed.

Learned Advocate Mr.Mankad contended that without following the procedure of law, the galla could not have been removed and is removed and, therefore, when he had a right to park his handcart, galla also should not be removed from that place. It is true that a permission to park handcart is granted on a monthly rent of Rs.20/-, but there is nothing on record to show that the petitioner was permitted to have a cabin on the same. What is removed by the concerned Police is the cabin and not the handcart. Therefore, any relief not to remove the cabin and if removed to restore the same and to pay the compensation for the same cannot be claimed for inasmuch as no permission to have a galla there was granted. If handcart is removed, then the petitioner was entitled to claim some relief. Admittedly, in the instant case, there is a galla instead of handcart and for the same, there was no permission granted. In view of this fact, the petitioner is not entitled to the relief sought. It is, however, made clear that if the handcart was there and the same was removed, then the same be restored at the place and the same can only be removed after following due process of law.

In view of the above observations, the following order:

The petition is dismissed. Rule discharged.

No costs.

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